

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK BURLEIGH,

Defendant-Appellant.

UNPUBLISHED

September 14, 2006

No. 260636

Wayne Circuit Court

LC No. 04-007873-02

Before: Murray, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree, premeditated murder, MCL 750.316(1)(a); felony murder, MCL 750.316(1)(b); assault with intent to commit murder, MCL 750.83; armed robbery, MCL 750.529; committing or attempting to commit a violent crime while wearing body armor, MCL 750.227f; and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right, and we affirm.

Defendant first argues that he was denied a fair trial when the prosecution improperly asked a witness leading questions, eventually reading entire sections of prior transcript verbatim into the record. A trial court's decision to admit or exclude evidence is reviewed for a clear abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will or a defiance of judgment. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

Leading questions should not be used during direct examination of a witness, but are permissible when "a party calls a hostile witness, an adverse party or a witness identified with an adverse party, interrogation may be by leading questions." MRE 611(c)(3). In order to warrant reversal on the basis of the improper use of leading questions, "it is necessary to show some prejudice or pattern of eliciting inadmissible testimony." *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001), quoting *People v White*, 53 Mich App 51, 58; 218 NW2d 403 (1974). Assuming, without deciding, that the challenged questions were leading, reversal is not required. The witness to whom the questions were asked was identified with an adverse party because he was a friend of defendant. Thus, leading questions were not necessarily improper. MRE 611(c)(3). Moreover, defendant fails to make an argument on appeal showing that *any* inadmissible testimony was elicited through the use of those leading questions. We will not search for authority or attempt to explain or rationalize whether the questions resulted in the

admission of inadmissible testimony at trial. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Further, defendant only obscurely makes an argument as to prejudice by arguing that the alleged error was not harmless because the witness “was not allowed to answer the questions at the time of trial and those answers may have very well been inconsistent or in direct contradiction to his prior testimony.” Defendant’s argument is nothing more than speculation and conjecture. And, after initially claiming a faulty memory, the witness testified at some length, in response to open-ended, non-leading questions, concerning defendant’s involvement in the robbery and shooting. We also note that, if defendant had answered the previous questions differently at trial, his prior inconsistent statements would have been admissible for impeachment purposes. MRE 613. Thus, we do not believe prejudice exists to warrant reversal in this case. Defendant’s arguments are therefore without merit, and we conclude that the trial court did not abuse its discretion by allowing the use of leading questions.

Defendant’s second issue on appeal is that plaintiff presented insufficient evidence to support his convictions of first-degree premeditated murder and wearing body armor. We disagree. A claim that evidence was insufficient to support a conviction raises an issue of law that must be reviewed de novo by this Court. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod by 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences therefrom may constitute sufficient evidence to find all the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The standard for reviewing a claim of insufficient evidence is deferential and this Court must make all reasonable inferences and resolve credibility conflicts in favor of the jury verdict. *Id.*; *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997).

As to defendant’s conviction for first-degree murder, defendant was convicted under two theories: premeditation and felony murder. Even if the evidence under one theory was insufficient, the other unchallenged theory supports the conviction. Defendant is therefore unable to obtain relief from his first-degree murder conviction, making this issue moot. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003). Nevertheless, the overwhelming evidence in this case supports a premeditated murder conviction. MCL 767.39 provides: “Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.” Defendant admitted to police that he aided in the commission of the robbery, and a defense witness testified that defendant and his accomplices were prepared to shoot people if they had to. From this evidence, a rational jury could find beyond a reasonable doubt that defendant either intended to kill or knew of his accomplices’ intent to do so when he participated in the crime.

As to defendant’s conviction for wearing body armor, there was likewise sufficient evidence to support the conviction. A person is guilty of wearing body armor when they “commit[] or attempt[] to commit a crime that involves a violent act or a threat of a violent act against another person while wearing body armor.” MCL 750.227f. A person who “procures,

counsels, aides, or abets” in the commission of an offense shall be punished as if he directly committed the offense. MCL 767.39. Defendant admitted to having “cased” the armored truck and taken part in the planning of the robbery. The driver of the armored truck testified that the shooter was wearing a utility vest that had “pockets and zippers and stuff on it.” Two bulletproof vests were later found in defendant’s home when it was searched. From this evidence, a rational jury could infer that the shooter was wearing one of the bulletproof vests during the robbery, and that defendant was guilty.

Affirmed, but remanded to the trial court for the judgment of sentence to be modified to reflect one conviction of first-degree murder under two theories. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Michael R. Smolenski

/s/ Deborah A. Servitto